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10 Attorneys for Secured Creditor U.S. Bank, N.A. successor in interest to the FDIC as receiver for  
11 Downey Savings and Loan Association, FA

12 UNITED STATES BANKRUPTCY COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 In re ) Bk. No. 09-59061  
15 )  
16 LEONARD JOSEPH BONA, ) CHAPTER 13  
17 )  
18 Debtor. ) R.S. No. DRP – 703  
19 )  
20 )  
21 ) MOTION FOR RELIEF FROM  
22 ) AUTOMATIC STAY  
23 )  
24 ) Hearing-  
25 ) Date : March 17, 2010  
26 ) Time : 3:00 PM  
27 ) Place : U.S. Bankruptcy Court  
28 ) 280 South First Street  
San Jose, California  
Courtroom 3070

U.S. Bank, N.A. successor in interest to the FDIC as receiver for Downey Savings and Loan Association, FA, a holder in due course, its assignees and/or successors, move the Court for relief from the Automatic Stay provided by 11 U.S.C. §362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. §362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may commence and continue all acts necessary to foreclose under the Deed of Trust secured by Debtor's property.

This Motion is brought pursuant to 11 U.S.C. §362(d)(1) for "cause" and due to the failure of Debtor to make required payments as set forth in the attached Declaration. Debtor's

1 failure to make required payments provides "cause" for relief from the Automatic Stay in  
2 accordance with the ruling of the Bankruptcy Appellate Panel in In re: Ellis, 60 B.R. 432.

3  
4 In addition, and in the event that this Court continues the Automatic Stay, Movant  
5 will seek adequate protection of its secured interest pursuant to 11 U.S.C. §§361 and 362, including  
6 a requirement that Debtor reinstates all past arrearages and immediately commence regular monthly  
7 payments.

8 Movant alleges that the commercially reasonable value of the subject Property is  
9 approximately \$263,608.00, as evidenced by Debtor's Schedules filed with this Court, a copy of  
10 which is attached hereto and made a part hereof. Movant requests that this Court take judicial  
11 notice of the aforementioned Schedules pursuant to Federal Rule of Evidence Section 201.

12 Movant also seeks an Order terminating and vacating the Automatic Stay for all  
13 purposes as it pertains to Movant's interest in the subject real Property, including the prosecution of  
14 appropriate foreclosure remedies, without the requirement of further notice or publication, except as  
15 may be required by state law.

16 Furthermore, Movant seeks attorneys' fees and costs incurred in bringing this  
17 Motion. Movant requests such fees pursuant to the Contract securing Movant's claim or pursuant to  
18 11 U.S.C. §506(b). Post-petition attorneys' fees and costs for the within motion may be added to  
19 the outstanding balance of the subject Note, pursuant to Travelers Casualty v. Pacific Gas and  
20 Electric Co., 549 U.S. \_\_\_\_\_ (2007), and as allowed under applicable non-bankruptcy law.

21 In addition, Movant requests such further relief as is just.

22 This Movant also seeks an Order waiving the 14-day stay described by Bankruptcy  
23 Rule 4001(a)(3).

24 This Motion shall be based on these moving papers, as well as the attached  
25 Declaration.

26 Responsive pleadings, points and authorities and declarations are not required, but  
27 may be filed, pursuant to Bankruptcy Local Rule 4001(f).

28 In the event neither Debtor, the Debtor's Counsel or the Trustee appears at a hearing

1 on this motion, the Court may grant relief from the Automatic Stay permitting moving party to  
2 foreclose on the Debtor's property located at **1367 Harding Street, Seaside, California** and obtain  
3 possession of such property without further hearing.  
4

5 WHEREFORE, Movant prays judgment as follows:

6 1.) For an Order granting relief from the Automatic Stay, permitting this Movant to  
7 move ahead with foreclosure proceedings under Movant's Deed of Trust.

8 2.) For such Order regarding adequate protection of Movant's interest as this Court  
9 deems proper.

10 3.) For attorneys' fees and costs for suit incurred herein.

11 4.) For an Order waiving the 14-day stay described by Bankruptcy Rule 4001(a)(3).

12 5.) For such other relief as this Court deems appropriate.

13 PROBER & RAPHAEL  
14 A LAW CORPORATION

15 DATED: February 10, 2010

16 By /s/ Dean R. Prober Esquire  
17 DEAN R. PROBER, ESQUIRE, #106207  
18 Attorney for Secured Creditor  
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